In the High Court of Judicature at Madras

Dated: 05.01.2007

Coram:

The Hon'ble Mr. Justice P.K.MISRA
and
The Hon'ble Mr. Justice K.MOHAN RAM

Habeas Corpus Petition No.1143 of 2006

Krishnan .. Petitioner

vs.

1. The Secretary to Government,
   Food, Co-operation and Consumer
   Protection Department,
   Chennai 9.

2. The District Magistrate
   and District Collector,
   Cuddalore District at Cuddalore.

3. The Secretary to Government,
   Food and Consumer Protection Department,
   Government of India,
   New Delhi. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Habeas Corpus, calling for the records in connection with the order of detention passed by the second respondent dated 28.10.2006 in No.C3/D.O/19/2006 against the petitioner's brother Sakthivel, son of Kuppusamy, aged about 37 years, who is confined at Central prison, Cuddalore and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

WEB COPY

For petitioner : Mr.C.Prakasam

For respondents : Mr.M.Babu Muthu Meeran,
Additional Public Prosecutor

https://hcservices.ecourts.gov.in/hcservices/

ORDER

(Order of the Court was made by P.K.MISRA, J.,)

Heard the learned counsel appearing for the parties.

2. The order of preventive detention passed under the provisions of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980(Act 7 of 1980) on the allegation that the detenu is a Black Marketeer is challenged in the present habeas corpus petition.

3. Learned counsel appearing for the petitioner has invited our attention to the fact that the detenu had been remanded in connection with the ground case in Crime No.543/2006 as well as the adverse case numbered as Crime No.12/2006 and in both matters, the allegation was that the detenu has committed an offence punishable under Section 6 (4) of TNSC (RDCS) Order, 1982 r/w 7(i)a(ii) of Essential Commodities Act, 1955. In other words, the allegations in the adverse case, in connection with which the detenu was also remanded, are equally serious in nature as compared to the ground case. In this background, the learned counsel has referred to paragraph 6 of the grounds of detention and the relevant paragraph is extracted below:

> "I am aware that Thiru K.Sakthivel is in remand at Sub Jail, Cuddalore in connection with Cuddalore Civil Supplies C.I.D. Cr.No.543/2006. He has already filed a bail application before the court of Judicial Magistrate No.III, Cuddalore on 09.10.2006 in C.M.P.No.3210/2006 and same was dismissed in the same court on 25.10.2006. I am also aware that there is real possibility of his coming out on bail by filing another bail application for the above case before the same court or higher court, since in similar cases bails are granted by the concerned court or higher courts after lapse of time. If he comes out on bail, he will indulge in future activities, which will be prejudicial to the maintenance of public supplies of Essential Commodities to the public".

4. Learned counsel for the petitioner, by placing reliance upon various decisions of this Court, has contended that this would indicate that the detaining authority has only applied its mind to the aspect as to whether the detenu is likely to be released on bail in the ground case, but no satisfaction has been recorded relating to the possibility of the detenu being released in connection with the adverse case, wherein the allegations were equally serious in nature.

5. In this connection, reference can be made to the decision of this Court in Balasubramanian @ Subramanian @ Subbudu @ subbu ..vs..

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

The Commissioner of Police, Madurai City (2006(1) CTC 340), wherein reference is made to an unreported decision in HCP No.638 of 2004 disposed of on 28.09.2004. In the unreported judgment, it has been observed as follows:

> "On a reading of the aforesaid decisions of the Supreme Court and the earlier Division Bench decision of this Court, even though we do not agree with the submission of the learned counsel for the petitioner that in the absence of filing of any bail application, the imminent possibility of the detenu coming out on bail is eschewed, we are convinced that non-consideration by the detaining authority the very relevant fact that the detenu had also been remanded in connection with three other cases, in two out of which at least, there were equally serious allegations regarding commission of offence under Section 307 IPC, has the effect of vitiating the subjective satisfaction of the detaining authority regarding possibility of the detenu coming out on bail. It is of course true that in the second adverse case, in respect of which also there was a remand, the offences were under Sections 341, 324 and 506(ii) IPC which were obviously less grave than the offences in the ground case registered under Sections 341, 336, 427, 307, 385 and 506(2) IPC. However, the 3rd and 4th adverse cases, in relation to which also the remand orders were applicable, related to commission of serious offences like 307 and 336 IPC. According to us, the non-consideration of the aforesaid aspect has the effect of vitiating the order of detention.

6. In 2006(1) CTC 340 (cited supra), while considering a similar matter, it has been observed under paragraph 6 as follows:

> "In our opinion, such stand taken in the counter affidavit cannot be accepted. Even assuming that the detenu would have been released in connection with Crime No.1399/2005, he could not have come out on bail as remand was also in respect of another case, namely, Crime No.2270/2004 and unless bail order would have been passed in such case, the detenu would have continued to remain inside the jail. Therefore, non consideration of this aspect has obviously vitiated the order of detention. The aforesaid conclusion is supported by a Division Bench decision of this Court to which one of us (P.K.Misra, J.,) was a party Anjammal ..vs.. The State of Tamil Nadu, 2004 MLJ (Crl.)829".

7. In view of the above decisions, we are of the opinion that the order of detention is liable to be quashed on account of the fact that there is no subjective satisfaction recorded by the detaining authority regarding the possibility of the detenu being released on

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

bail in the adverse case in connection with which he had admittedly been remanded.

8. Learned Additional Public Prosecutor, however, placed reliance upon the observation of the Supreme Court in Union of India ..vs.. Paul Manickam (2004 SCC Crl.239), wherein it has been observed as follows:

> "Even in the case of a person in custody, a order of detention can be validly passed subject to the following principles: (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has a reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his release on bail, and (b) that on being released, he would in all probability indulge in prejudicial activities; and (3) if it is felt essential to detain him to prevent him from so doing. If an order is passed after recording satisfaction in that regard, the order would be valid. In the case at hand the order of detention and grounds of detention show an awareness of custody and/or possibility of release on bail".

9. A reading of the aforesaid decision makes it clear that the principle earlier laid down by the Supreme court in several cases had only been reiterated. As a matter of fact, in the said case, the detenu had been remanded in connection with one case and the detaining authority, on the particulars available on record, came to the conclusion that the detenu was likely to be released on bail in the said case. In our opinion, there is nothing in the said decision which can be said to be contradictory to the views already expressed in several decisions of this Court.

10. For the aforesaid reasons, the impugned order of detention is quashed and the habeas corpus petition is allowed. The detenu is directed to be set at liberty forthwith, unless he is required in connection with any other case.

WEB COPY

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

gl

https://hcservices.ecourts.gov.in/hcservices/

To

1. The Secretary to Government,
   Food, Co-operation and Consumer
   Protection Department,
   Chennai 9.

2. The District Magistrate
   and District Collector,
   Cuddalore District at Cuddalore.

3. The Secretary to Government,
   Food and Consumer Protection Department,
   Government of India,
   New Delhi.

4. The Superintendent
   Central Prison,
   Cuddalore.

5. The Public Prosecutor
   High Court, Madras.

6.The Joint Secretary to Government
Public (Law & Order) Fort St. George,
Chennai -9.

+1cc to Mr.C.Prakasam, Advocate Sr 1321

NG (CO)
km/12.1.

H.C.P.No.1143 of 2006

सत्यमेव जयते
WEB COPY

https://hcservices.ecourts.gov.in/hcservices/